

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

1 State of Arkansas  
2 85th General Assembly  
3 Regular Session, 2005

# A Bill

SENATE BILL 1061

4  
5 By: Senators Wooldridge, Wilkinson, Altes, Baker, Faris, Holt, Horn, G. Jeffress, J. Jeffress, B. Johnson,  
6 Miller, J. Taylor, Whitaker

## For An Act To Be Entitled

10 AN ACT TO CREATE THE TRANSDERMAL ALCOHOL  
11 MONITORING PROGRAM IN THE OFFICE OF DRIVER  
12 SERVICES OF THE REVENUE DIVISION OF THE  
13 DEPARTMENT OF FINANCE AND ADMINISTRATION; TO  
14 ALLOW A PERSON WHO IS ARRESTED FOR DRIVING WHILE  
15 INTOXICATED OR FOR REFUSING TO SUBMIT TO CHEMICAL  
16 TESTING FOR ALCOHOL TO PARTICIPATE IN THE  
17 TRANSDERMAL ALCOHOL MONITORING PROGRAM; TO  
18 PROVIDE AN ALTERNATIVE SENTENCE FOR A PERSON WHO  
19 IS FOUND GUILTY, PLEADS GUILTY, OR PLEADS NOLO  
20 CONTENDERE TO THE OFFENSE OF DRIVING WHILE  
21 INTOXICATED FOR ELECTRONIC MONITORING AND  
22 PARTICIPATION IN A TRANSDERMAL ALCOHOL MONITORING  
23 PROGRAM; AND FOR OTHER PURPOSES.

## Subtitle

24  
25 TO CREATE THE TRANSDERMAL ALCOHOL  
26 MONITORING PROGRAM IN THE OFFICE OF  
27 DRIVER SERVICES OF THE REVENUE DIVISION  
28 OF THE DEPARTMENT OF FINANCE AND  
29 ADMINISTRATION.  
30

31  
32  
33 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

34  
35 SECTION 1. Arkansas Code Title 5, Chapter 65 is amended to add an  
36 additional subchapter to read as follows:





1                   (A) The presence of alcohol in the person's blood as  
2 determined by a transdermal alcohol monitoring device; and

3                   (B) Blocking, obstructing, or tampering with the  
4 transdermal alcohol monitoring device.

5                   (2) A person who is arrested for his or her first offense for  
6 driving under the influence of alcohol with an alcohol concentration of at  
7 least eight-hundredths (0.08) shall be allowed to participate in the  
8 transdermal alcohol monitoring program no more than one (1) time during the  
9 period of mandatory suspension of his or her driver's license.

10                  (3) A person who is arrested for his or her first offense for  
11 driving under the influence of alcohol with an alcohol concentration of at  
12 least fifteen-hundredths (0.15) shall be allowed to participate in the  
13 transdermal alcohol monitoring program no more than two (2) times during the  
14 period of mandatory suspension of his or her driver's license.

15                  (4) A person who is arrested for his or her second or subsequent  
16 offense for driving under the influence of alcohol within five (5) years of  
17 the first offense shall be allowed to participate in the transdermal alcohol  
18 monitoring program no more than six (6) times during the period of mandatory  
19 suspension of his or her driver's license.

20                  (e)(1) If a participant is found to have blocked, obstructed, or  
21 tampered with the transdermal alcohol monitoring device for the first time or  
22 if alcohol is detected by a transdermal alcohol monitoring device in a  
23 participant's bodily fluids for the first time, then the participant may  
24 choose to continue the transdermal alcohol monitoring program but only if the  
25 participant agrees to ninety (90) consecutive days of sobriety beginning on  
26 his or her first day of participation in the second transdermal alcohol  
27 monitoring program.

28                  (2) If a participant is found to have blocked, obstructed, or  
29 tampered with the transdermal alcohol monitoring device for the second time  
30 or if alcohol is detected by a transdermal alcohol monitoring device in a  
31 participant's bodily fluids for the second time, then the participant may  
32 choose to continue the transdermal alcohol monitoring program but only if the  
33 participant agrees to one hundred eighty (180) consecutive days of sobriety  
34 beginning on his or her first day of participation in the third transdermal  
35 alcohol monitoring program.

36                  (3)(A) If a participant is found to have blocked, obstructed, or

1 tampered with the transdermal alcohol monitoring device for the third or  
2 subsequent time or if alcohol is detected by a transdermal alcohol monitoring  
3 device in a participant's bodily fluids for the third or subsequent time,  
4 then the participant shall be removed from the transdermal alcohol monitoring  
5 program.

6 (B) If the person is eligible to participate in the  
7 transdermal alcohol monitoring program more than one (1) time during the  
8 period of his or her driver's license suspension as provided under subsection  
9 (d) of this section, then the person shall only be allowed to reenter the  
10 transdermal alcohol program if he or she:

11 (i) Establishes the completion of an alcohol  
12 treatment or education program after the date that alcohol was detected in  
13 the participant's bodily fluids; and

14 (ii) Was removed from the transdermal alcohol  
15 monitoring program for a period of at least thirty (30) days.

16  
17 5-65-502. Requirements -- Penalties.

18 (a) A participant in the transdermal alcohol monitoring program who is  
19 seeking eligibility for the issuance of an ignition interlock restricted  
20 license shall not operate a motor vehicle.

21 (b)(1) Except as provided under subdivision (b)(3) of this section, a  
22 person who is found guilty of, pleads guilty to, or pleads nolo contendere to  
23 violating one (1) or more provisions of this section is guilty of a Class A  
24 misdemeanor.

25 (2) If the Office of Driver Services finds that a person has  
26 violated one (1) or more of the provisions of this section, then the office  
27 shall:

28 (A) Remove the person from the transdermal alcohol  
29 monitoring program; and

30 (B)(i) Reinstate the person's driver's license suspension  
31 for the term of the original license suspension or revocation.

32 (ii) The term of the reinstated suspension or  
33 revocation shall begin on the date of the reinstatement of the suspension or  
34 revocation under this subsection.

35 (3) The penalties under subdivision (c)(1) or (2) of this  
36 section shall not apply if the person establishes:

1                   (A) The transdermal alcohol monitoring device  
2 malfunctioned;

3                   (B) A medical emergency necessitated the removal of the  
4 transdermal alcohol monitoring device; or

5                   (C) A reason that the court or the Office of Driver  
6 Services finds to be compelling to explain the violation.

7  
8           5-65-503. Costs.

9           A participant in the transdermal alcohol monitoring program shall pay  
10 the reasonable costs:

11                   (1) Of participating in the transdermal alcohol monitoring  
12 program; and

13                   (2) Associated with leasing or maintaining the transdermal  
14 alcohol monitoring device.

15  
16           5-65-504. Circumvention or improper use.

17           (a)(1) If a court finds that a participant in the transdermal alcohol  
18 monitoring program has violated the conditions under this subchapter related  
19 to the proper use, circumvention, maintenance, or monitoring of a transdermal  
20 alcohol monitoring device, then the court shall order:

21                   (A) The person to withdraw from the transdermal alcohol  
22 monitoring program; and

23                   (B) The Office of Driver Services of the Revenue Division  
24 of the Department of Finance and Administration to reinstate a license  
25 suspension for the term of the original license suspension or revocation.

26                   (2) The term of the reinstated suspension shall begin on the  
27 date of the court-ordered reinstatement of the suspension or revocation under  
28 this subsection.

29           (b)(1) If the Office of Driver Services of the Revenue Division of the  
30 Department of Finance and Administration finds that a participant in the  
31 transdermal alcohol monitoring program has violated the conditions under this  
32 subchapter related to the proper use, circumvention, maintenance, or  
33 monitoring of a transdermal alcohol monitoring device, then the office shall:

34                   (A) Remove the person from the transdermal alcohol  
35 monitoring program; and

36                   (B) Reinstate the person's driver's license suspension for

1 the term of the original license suspension.

2 (2) The term of the reinstated suspension shall begin on the  
3 date of the reinstatement of the suspension under this subsection.

4  
5 5-65-505. Duties of the Office of Driver Services regarding the  
6 transdermal alcohol monitoring program.

7 The Office of Driver Services of the Revenue Division of the Department  
8 of Finance and Administration shall:

9 (1) Develop and implement the transdermal alcohol monitoring  
10 program; and

11 (2) Promulgate the rules and forms necessary for the  
12 implementation and administration of the transdermal alcohol monitoring  
13 program.

14  
15 5-65-506. Duties of the Department of Health regarding transdermal  
16 alcohol monitoring devices.

17 (a) The Department of Health shall:

18 (1) Certify the transdermal alcohol monitoring devices for use  
19 in this state;

20 (2) Approve the entities which monitor and maintain the  
21 transdermal alcohol monitoring devices; and

22 (3) Adopt rules for the certification of the transdermal alcohol  
23 monitoring devices.

24 (b) The rules shall require the transdermal alcohol monitoring device,  
25 at a minimum, to:

26 (1) Not impede the safety of a person;

27 (2) Not impede the safe operation of a vehicle;

28 (3) Be designed so as to minimize the opportunities to be  
29 bypassed or tampered;

30 (4) Work accurately and reliably in unsupervised environments;

31 (5) Properly and accurately measure the person's blood alcohol  
32 levels;

33 (6) Detect any attempts to block, obstruct, or tamper with the  
34 transdermal alcohol monitoring device;

35 (7) Be designed to minimize the inconvenience to a sober user;  
36 and

1           (8) Be furnished by an entity that is responsible for user  
2 training, servicing, maintenance, monitoring, and reporting the results of  
3 the transdermal alcohol monitoring device to the Office of Driver Services of  
4 the Revenue Division of the Department of Finance and Administration.

5           (c) The Department of Health shall develop a warning label to be  
6 affixed to all transdermal alcohol monitoring devices used in the State of  
7 Arkansas to warn any person of the possible penalties for tampering with or  
8 attempting to circumvent the device.

9           (d) The Department of Health shall publish and update a list of  
10 certified transdermal alcohol monitoring device dealers and the list shall be  
11 provided periodically to each district and circuit court in this state.

12           (e) Only transdermal alcohol monitoring devices that are approved by  
13 the State Board of Health as meeting the requirements of this chapter shall  
14 be used for making transdermal alcohol measurements.

15  
16           5-65-507. Transdermal alcohol monitoring devices.

17           (a) A transdermal alcohol monitoring device that is ordered to be worn  
18 by a person under this chapter shall be constructed so that the alcohol  
19 concentration analysis is made automatically when a transdermal alcohol  
20 measurement is taken and the analysis is transmitted daily.

21           (b) The entity that is monitoring a person who is participating in a  
22 transdermal alcohol monitoring program shall provide the following notice if  
23 the transdermal alcohol monitoring device detects any alcohol in the person's  
24 blood or if the transdermal alcohol monitoring device detects the blocking,  
25 obstructing, or tampering with the transdermal alcohol monitoring device:

26                   (1) A telephone call to the person who is participating in the  
27 transdermal alcohol monitoring program and to the administrator of the  
28 transdermal alcohol monitoring program; and

29                   (2) Written notice and documentation to the person who is  
30 participating in the transdermal alcohol monitoring program and to the  
31 administrator of the transdermal alcohol monitoring program within five (5)  
32 business days after the alcohol, blocking, obstructing, or tampering is  
33 detected.

34  
35           SECTION 2. Arkansas Code Title 5, Chapter 65, Subchapter 1 is amended  
36 to add an additional section to read as follows:

1 5-65-121. Transdermal alcohol monitoring as an alternative punishment.

2 (a) If a court orders transdermal alcohol monitoring as an alternative  
3 punishment under § 5-65-111(e), then the court shall establish in its order:

4 (1) The person is required to maintain total abstinence while  
5 participating in the transdermal alcohol monitoring program;

6 (2) The period of time that the person shall be required to use  
7 a transdermal alcohol monitoring device and participate in a transdermal  
8 monitoring program as provided under § 5-65-111(e)(2); and

9 (3) The requirement that the alternative punishment is  
10 contingent upon the person completing the alternative punishment and  
11 otherwise following the rules, procedures, and terms related to the  
12 alternative punishment.

13 (b)(1) Notwithstanding any other penalty provided by law and except as  
14 provided in subsection (c) of this section, if a court finds that a person  
15 has violated one (1) or more provisions of subsection (a) of this section,  
16 then the court shall order:

17 (A) The person to withdraw from the transdermal alcohol  
18 monitoring program; and

19 (B) The imposition of a punishment as provided under § 5-  
20 65-111(a) and (b).

21 (2) The term of the punishment imposed due to a violation of  
22 subsection (a) of this section shall begin on the date of the court-ordered  
23 termination of the alternative punishment.

24 (c) The penalties under subsection (b) of this section shall not apply  
25 if the person establishes:

26 (1) The transdermal alcohol monitoring device malfunctioned;

27 (2) A medical emergency necessitated the removal of the  
28 transdermal alcohol monitoring device; or

29 (3) A reason that the court finds to be compelling to explain  
30 the violation.

31 (d)(1) Upon ordering the use of a transdermal alcohol monitoring  
32 device, the court shall require the person:

33 (A)(i) To pay the reasonable cost of participating in the  
34 transdermal alcohol monitoring program.

35 (ii) The costs associated with participating in the  
36 transdermal alcohol monitoring program may be established in a payment



1 schedule; and

2 (B)(i) To pay the reasonable cost of leasing and  
3 maintaining the device.

4 (ii) The costs associated with the leasing or  
5 maintaining the transdermal alcohol monitoring device may be established in a  
6 payment schedule.

7 (2)(A) Notwithstanding any other penalty provided by law, if the  
8 court finds that a person fails to comply with the requirements of this  
9 subsection (d), then the court shall order the person to withdraw from the  
10 transdermal alcohol monitoring program and shall impose a punishment as  
11 provided under § 5-65-111(a) and (b).

12 (B) The term of the punishment imposed due to a violation  
13 of subsection (d) of this section shall begin on the date of the court-  
14 ordered termination of the alternative punishment.

15 (e)(1) A person sentenced under this section to participate in a  
16 transdermal alcohol monitoring program as an alternative punishment may not  
17 tamper with or in any way attempt to circumvent the operation of the  
18 transdermal alcohol monitoring device that he or she is wearing pursuant to a  
19 court order under this section.

20 (2) A violation of this subsection is a Class A misdemeanor.

21  
22 SECTION 3. Arkansas Code § 5-65-101 is amended to read as follows:  
23 5-65-101. Omnibus DWI Act - Application.

24 (a) This ~~act~~ chapter shall be known as the "Omnibus DWI Act".

25 (b) The provisions of this ~~act~~ chapter shall govern the prosecution  
26 and administrative proceedings for offenses defined by this ~~act~~ chapter and  
27 committed after March 21, 1983.

28 (c)(1) The provisions of this ~~act~~ chapter do not apply to offenses  
29 committed prior to March 21, 1983.

30 (2)(A) ~~Those offenses~~ Offenses committed prior to March 21,  
31 1983, shall be construed and punished in accordance with the law existing at  
32 the time of the commission of the offense.

33 (B) However, all pleas of guilty and nolo contendere and  
34 all findings of guilty of driving while intoxicated within three (3) years  
35 prior to March 21, 1983, shall be counted in determining the number of prior  
36 offenses for the purposes of enhancing the penalties provided by this ~~act~~

1 chapter for violating § 5-65-103.

2

3 SECTION 4. Arkansas Code § 5-65-102 is amended to read as follows:

4 5-65-102. Definitions.

5 ~~As used in this act, unless the context otherwise requires~~ As used in  
6 this chapter:

7 (1) "Intoxicated" means influenced or affected by the ingestion  
8 of alcohol, a controlled substance, any intoxicant, or any combination  
9 thereof, to such a degree that the driver's reactions, motor skills, and  
10 judgment are substantially altered and the driver, therefore, constitutes a  
11 clear and substantial danger of physical injury or death to himself and other  
12 motorists or pedestrians;

13 (2) "Controlled substance" means a drug, substance, or immediate  
14 precursor in Schedules I through VI. The fact that any person charged with a  
15 violation of this act is or has been entitled to use that drug or controlled  
16 substance under the laws of this state shall not constitute a defense against  
17 any charge of violating this ~~act~~ chapter;

18 (3) "Victim impact statement" means a voluntary written or oral  
19 statement of a victim, or relative of a victim, who has sustained serious  
20 injury due to a violation of this ~~act~~ chapter;

21 (4) "Sworn report" means a signed, written statement of a  
22 certified law enforcement officer, under penalty of perjury, on a form  
23 provided by the Director of the Department of Finance and Administration;

24 (5) "Transdermal alcohol measurement" means the detection and  
25 determination of the ethanol alcohol content in a person's blood by using a  
26 transdermal alcohol monitoring device that is in close and constant contact  
27 with the skin;

28 (6) "Transdermal alcohol monitoring device" means an external  
29 and noninvasive device approved by the Department of Health that:

30 (A) Is worn by a person twenty-four (24) hours a day;

31 (B) Provides at least one (1) transdermal alcohol  
32 measurement during each one-hour period; and

33 (C) Transmits the transdermal alcohol measurements at  
34 least one (1) time in a period of twenty-four (24) hours; and

35 (7) "Transdermal alcohol monitoring program" means the program  
36 administered by the Office of Driver Services of the Revenue Division of the

1 Department of Finance and Administration that requires the use of a  
 2 transdermal alcohol monitoring device and that requires monitoring by an  
 3 entity approved by the Department of Health to monitor the data from the  
 4 transdermal alcohol monitoring device.

5  
 6 SECTION 5. Arkansas Code § 5-65-104 is amended to read as follows:

7 5-65-104. Seizure, suspension, and revocation of license - Temporary  
 8 permits - Ignition interlock restricted license - Transdermal alcohol  
 9 measurement.

10 (a)(1) At the time of arrest for operating or being in actual physical  
 11 control of a motor vehicle while intoxicated or while there was an alcohol  
 12 concentration of eight-hundredths (0.08) or more in the person's breath or  
 13 blood, § 5-65-103, the arrested person shall immediately surrender his or her  
 14 license, permit, or other evidence of driving privilege to the arresting law  
 15 enforcement officer as provided in § 5-65-402.

16 (2) The Except as provided under § 5-65-501 et seq., the Office  
 17 of Driver Services of the Revenue Division of the Department of Finance and  
 18 Administration or its designated official shall suspend or revoke the driving  
 19 privilege of an arrested person or shall suspend any nonresident driving  
 20 privilege of an arrested person, as provided in § 5-65-402. The suspension or  
 21 revocation shall be based on the number of previous offenses as follows:

22 (A)(i) Suspension for one hundred twenty (120) days for  
 23 the first offense of operating or being in actual physical control of a motor  
 24 vehicle while intoxicated or while there was an alcohol concentration of at  
 25 least eight hundredths (0.08) but less than fifteen hundredths (0.15) by  
 26 weight of alcohol in the person's blood or breath, § 5-65-103;

27 (ii) Suspension for six (6) months for the first  
 28 offense of operating or being in actual physical control of a motor vehicle  
 29 while intoxicated by the ingestion of or by the use of a controlled  
 30 substance; and

31 (iii) Suspension for one hundred eighty (180) days  
 32 for the first offense of operating or being in actual physical control of a  
 33 motor vehicle while intoxicated and while there was an alcohol concentration  
 34 of fifteen hundredths (0.15) or more by weight of alcohol in the person's  
 35 blood or breath. Provided, however, that if the court orders issuance of an  
 36 ignition interlock restricted license under § 5-65-118, ~~the interlock~~

1 ~~restricted license shall be available immediately~~ the suspension period for  
 2 which no restricted license shall be available shall be a minimum of one (1)  
 3 year and ~~The~~ the restricted driving permit provision of § 5-65-120 does not  
 4 apply to this suspension;

5 (B) Suspension for twenty-four (24) months for a second  
 6 offense of operating or being in actual physical control of a motor vehicle  
 7 while intoxicated or while there was an alcohol concentration of eight  
 8 hundredths (0.08) or more by weight of alcohol in the person's blood or  
 9 breath, § 5-65-103, within five (5) years of the first offense. Provided,  
 10 however, that if the court orders issuance of an ignition interlock  
 11 restricted license under § 5-65-118, the suspension period for which no  
 12 restricted license shall be available shall be a minimum of one (1) year;

13 (C) Suspension for thirty (30) months for the third  
 14 offense of operating or being in actual physical control of a motor vehicle  
 15 while intoxicated or while there was an alcohol concentration of eight  
 16 hundredths (0.08) or more by weight of alcohol in the person's blood or  
 17 breath, § 5-65-103, within five (5) years of the first offense. Provided,  
 18 however, that if the court orders issuance of an ignition interlock  
 19 restricted license under § 5-65-118, the suspension period for which no  
 20 restricted license shall be available shall be a minimum of one (1) year; and

21 (D) Revocation for four (4) years, during which no  
 22 restricted permits may be issued, for the fourth or subsequent offense of  
 23 operating or being in actual physical control of a motor vehicle while  
 24 intoxicated or while there was an alcohol concentration of eight hundredths  
 25 (0.08) or more by weight of alcohol in the person's blood or breath, § 5-65-  
 26 103, within five (5) years of the first offense.

27 (3) ~~If~~ Except as provided under § 5-65-501 et seq., if a person  
 28 is a resident who is convicted of driving without a license or permit to  
 29 operate a motor vehicle and the underlying basis for the suspension,  
 30 revocation, or restriction of the license was for a violation of § 5-65-103,  
 31 the court may order, in addition to any other penalties provided for under  
 32 law, that the Office of Driver Services issue only an ignition interlock  
 33 restricted permit for a period of one (1) year prior to the reinstatement or  
 34 reissuance of a license or permit after the person would otherwise be  
 35 eligible for reinstatement or reissuance of the person's license.

36 (4) In order to determine the number of previous offenses to

1 consider when suspending or revoking the arrested person's driving  
2 privileges, the office shall consider as a previous offense:

3 (A) Any convictions for offenses of operating or being in  
4 actual physical control of a motor vehicle while intoxicated or while there  
5 was an alcohol concentration of eight-hundredths (0.08) or more in the  
6 person's breath or blood under § 5-65-103 or refusing to submit to a chemical  
7 test under § 5-65-202 which occurred prior to July 1, 1996;

8 (B) Any suspension or revocation of driving privileges for  
9 arrests for operating or being in actual physical control of a motor vehicle  
10 while intoxicated or while there is an alcohol concentration of eight-  
11 hundredths (0.08) or more in the person's breath or blood under § 5-65-103 or  
12 refusing to submit to a chemical test under § 5-65-202 occurring on or after  
13 July 1, 1996, where the person was not subsequently acquitted of the criminal  
14 charges.

15 (b)(1) Any person whose license is suspended or revoked pursuant to  
16 this section shall be required to complete an alcohol education program as  
17 prescribed and approved by the Highway Safety Program or an alcohol treatment  
18 program as approved by the Bureau of Alcohol and Drug Abuse Prevention of the  
19 Department of ~~Health~~ Human Services, unless the charges are dismissed or the  
20 person is acquitted of the charges upon which the suspension or revocation is  
21 based.

22 (2) A person whose license is suspended or revoked pursuant to  
23 this section shall furnish proof of attendance at, and completion of, the  
24 alcoholism treatment or education program before reinstatement of his or her  
25 suspended or revoked driver's license or shall furnish proof of dismissal or  
26 acquittal of the charge on which the suspension or revocation is based.

27 (3) Even if a person has filed a de novo petition for review  
28 pursuant to former subsection (c) of this section, the person shall be  
29 entitled to reinstatement of driving privileges upon complying with this  
30 subsection and shall not be required to postpone reinstatement until the  
31 disposition of the de novo review in circuit court has occurred.

32  
33 SECTION 6. Arkansas Code § 5-65-111 is amended to read as follows:  
34 5-65-111. Prison terms - ~~Exception~~ Exceptions.

35 (a)(1) ~~Any~~ Except as provided in subsection (e) of this section, any  
36 person who pleads guilty or nolo contendere to, or is found guilty of,

1 violating § 5-65-103, for a first offense, may be imprisoned for no less than  
2 twenty-four (24) hours and no more than one (1) year, except that the court  
3 may order public service in lieu of jail, and in that instance, the court  
4 shall include the reasons therefor in its written order or judgment.

5 (2) However, if a passenger under sixteen (16) years of age was  
6 in the vehicle at the time of the offense, a person who pleads guilty or nolo  
7 contendere to, or is found guilty of, violating § 5-65-103, for a first  
8 offense, may be imprisoned for no fewer than seven (7) days and no more than  
9 one (1) year, except that the court may order public service in lieu of jail,  
10 and in that instance, the court shall include the reasons therefor in its  
11 written order or judgment.

12 (b) Any ~~Any~~ Except as provided in subsection (e) of this section, any  
13 person who pleads guilty or nolo contendere to, or is found guilty of,  
14 violating § 5-65-103 or any other equivalent penal law of another state or  
15 foreign jurisdiction shall be imprisoned or shall be ordered to perform  
16 public service in lieu of jail as follows:

17 (1)(A) For no fewer than seven (7) days but no more than one (1)  
18 year for the second offense occurring within five (5) years of the first  
19 offense or no fewer than thirty (30) days of community service.

20 (B)(i) However, if a person under sixteen (16) years of  
21 age was in the vehicle at the time of the offense, for no fewer than thirty  
22 (30) days but no more than one (1) year for the second offense occurring  
23 within five (5) years of the first offense or no fewer than sixty (60) days  
24 of community service.

25 (ii) If the court orders community service, the  
26 court shall clearly set forth in written findings the reasons for the order  
27 of community service;

28 (2)(A) For no fewer than ninety (90) days but no more than one  
29 (1) year for the third offense occurring within five (5) years of the first  
30 offense or no fewer than ninety (90) days of community service.

31 (B)(i) However, if a person under sixteen (16) years of  
32 age was in the vehicle at the time of the offense, for no fewer than one  
33 hundred twenty ~~days~~ (120) days but no more than one (1) year for the third  
34 offense occurring within five (5) years of the first offense or no fewer than  
35 one hundred twenty (120) days of community service.

36 (ii) If the court orders community service, the

1 court shall clearly set forth in written findings the reasons for the order  
2 of community service;

3 (3)(A) For at least one (1) year but no more than six (6) years  
4 for the fourth offense occurring within five (5) years of the first offense  
5 or not less than one (1) year of community service and shall be guilty of a  
6 felony.

7 (B)(i) However, if a person under sixteen (16) years of  
8 age was in the vehicle at the time of the offense, for at least two (2) years  
9 but no more than six (6) years for the fourth offense occurring within five  
10 (5) years of the first offense or not less than two (2) years of community  
11 service and shall be guilty of a felony.

12 (ii) If the court orders community service, the  
13 court shall clearly set forth in written findings the reasons for the order  
14 of community service; and

15 (4)(A)(i) For at least two (2) years but no more than ten (10)  
16 years for the fifth or subsequent offense occurring within five (5) years of  
17 the first offense or not less than two (2) years of community service and  
18 shall be guilty of a felony.

19 (ii) If the court orders community service, the  
20 court shall clearly set forth in written findings the reasons for the order  
21 of community service.

22 (B)(i) However, if a person under sixteen (16) years of  
23 age was in the vehicle at the time of the offense, for at least three (3)  
24 years but no more than ten (10) years for the fifth offense occurring within  
25 five (5) years of the first offense or not less than three (3) years of  
26 community service and shall be guilty of a felony.

27 (ii) If the court orders community service, the  
28 court shall clearly set forth in written findings the reasons for the order  
29 of community service.

30 (c) For all arrests or offenses occurring before July 30, 1999, but  
31 which have not reached a final disposition as to judgment in court, the  
32 offenses shall be decided under the law in effect at the time the offense  
33 occurred, and any defendant shall be subject to the penalty provisions in  
34 effect at that time and not under the provisions of this section.

35 (d) It is an affirmative defense to prosecution under subdivisions  
36 (a)(2), (b)(1)(B), (b)(2)(B), (b)(3)(B), and (b)(4)(B) of this section that

1 the person operating or in actual physical control of the motor vehicle was  
2 not more than two (2) years older than the passenger.

3 (e)(1)(A) If a court makes the following findings, then the court may  
4 order a person to an alternative punishment under subdivision (e)(1)(B) of  
5 this section:

6 (i) The person has been found guilty, pleaded  
7 guilty, or pleaded nolo contendere to a violation of § 5-65-103(b) or an  
8 alcohol-related offense under § 5-65-103(a);

9 (ii) The person is financially able to afford the  
10 use of a transdermal alcohol monitoring device, electronic monitoring, and  
11 participation in a transdermal alcohol monitoring program; and

12 (iii) The person agrees to follow the rules,  
13 procedures, and terms related to electronic monitoring, house arrest, the use  
14 of a transdermal alcohol monitoring device, or participation in a transdermal  
15 alcohol monitoring program as provided under subdivision (e)(2) of this  
16 section.

17 (B) A court may order a person to submit to an alternative  
18 punishment of one (1) or more of the following in lieu of imprisonment or  
19 community service under this section:

20 (i) The use of a transdermal alcohol monitoring  
21 device and participation in a transdermal alcohol monitoring program; and

22 (ii) House arrest with electronic monitoring.

23 (2) If a court orders an alternative punishment under this  
24 subsection (e), then the court shall order the person to the use of a  
25 transdermal alcohol monitoring device and house arrest with electronic  
26 monitoring for:

27 (A) No less than three (3) months and no more than six (6)  
28 months for the first offense;

29 (B) No less than six (6) months and no more than twelve  
30 (12) months for a second offense occurring within five (5) years after the  
31 first offense;

32 (C) No less than twelve (12) months and no more than  
33 eighteen (18) months for a third offense occurring within five (5) years  
34 after the first offense; and

35 (D) No less than twenty-four (24) months and no more than  
36 five (5) years for a fourth or subsequent offense occurring within five (5)



1 years after the first offense.

2 (3) The Department of Health and the Department of Correction  
 3 shall jointly promulgate rules, procedures, and forms to be used under this  
 4 subsection.

5 (4) The purpose of this subsection is to provide an alternative  
 6 for the court to consider in lieu of mandatory imprisonment or community  
 7 service under this section.

8  
 9 SECTION 7. Arkansas Code § 5-65-204 is amended to read as follows:

10 5-65-204. Validity - Approved methods.

11 (a)(1) Alcohol concentration shall mean either:

12 (A) Grams of alcohol per one hundred milliliters (100 ml)  
 13 or one hundred cubic centimeters (100 cc) of blood; or

14 (B) Grams of alcohol per two hundred ten liters (210 l) of  
 15 breath.

16 (2) The alcohol concentration of other bodily substances shall  
 17 be based upon grams of alcohol per one hundred milliliters (100 ml), or one  
 18 hundred cubic centimeters (100 cc) of blood, the same being percent weight  
 19 per volume or percent alcohol concentration.

20 (b)(1) Chemical analyses of the person's blood, urine, ~~or~~ breath, or  
 21 other bodily substances to be considered valid under the provisions of this  
 22 ~~act~~ chapter shall have been performed according to methods approved by the  
 23 Department of Health or by an individual possessing a valid permit issued by  
 24 the Department of Health for this purpose.

25 (2) The Department of Health is authorized to approve  
 26 satisfactory techniques or methods, to ascertain the qualifications and  
 27 competence of individuals to conduct such analyses, and to issue permits  
 28 which shall be subject to termination or revocation at the discretion of the  
 29 Department of Health.

30 (c) Chemical analyses of the person's blood, urine, breath, or other  
 31 bodily substance for determining the alcohol content of the blood or breath,  
 32 to be considered valid under the provisions of this section, shall have been  
 33 performed according to methods approved by the State Board of Health.

34 (d)(1) When a person ~~shall submit~~ submits to a blood test at the  
 35 request of a law enforcement officer under the provisions of this section,  
 36 blood may be drawn by a physician or a person acting under the direction and

1 supervision of a physician.

2 (2) ~~This limitation~~ The limitation under subdivision (d)(1) of  
3 this section shall not apply to the taking of breath, ~~or~~ urine, or other  
4 bodily substance specimens.

5 (3) No person, institution, or office in this state who  
6 withdraws blood for the purpose of determining alcohol or controlled  
7 substance content thereof at the request of a law enforcement officer under  
8 the provisions of this subchapter shall be held liable for violating any of  
9 the criminal laws of this state in connection therewith, nor shall any  
10 physician, institution, or person acting under the direction or supervision  
11 of a physician be held liable in tort for the withdrawal of such blood unless  
12 such persons are negligent in connection therewith, or the blood is taken  
13 over the objections of the subject.

14 (e)(1) The person tested may have a physician or a qualified  
15 technician, registered nurse, or other qualified person of his own choice  
16 administer a complete chemical test in addition to any test administered at  
17 the direction of a law enforcement officer.

18 (2) The law enforcement officer shall advise the person in  
19 writing of this right and that if the person chooses to have an additional  
20 test and the person is found not guilty, the arresting law enforcement agency  
21 will reimburse the person for the cost of the additional test.

22 (3) The refusal or failure of a law enforcement officer to  
23 advise a person of this right and to permit and assist the person to obtain a  
24 test shall preclude the admission of evidence relating to the test taken at  
25 the direction of a law enforcement officer.

26 (f) Upon the request of the person who shall submit to a chemical test  
27 or tests at the request of a law enforcement officer, full information  
28 concerning the test shall be made available to him or his attorney.

29  
30 SECTION 8. Arkansas Code § 5-65-205 is amended to read as follows:  
31 5-65-205. Refusal to submit.

32 (a) If a person under arrest refuses upon the request of a law  
33 enforcement officer to submit to a chemical test designated by the law  
34 enforcement agency, as provided in § 5-65-202, none shall be given, and the  
35 person's motor vehicle operator's license shall be seized by the law  
36 enforcement officer, and the officer shall immediately deliver to the person

1 from whom the license was seized a temporary driving permit, as provided by §  
2 5-65-402.

3 (b) ~~The~~ Except as provided under § 5-65-501 et seq., the Office of  
4 Driver Services of the Revenue Division of the Department of Finance and  
5 Administration shall then proceed to suspend or revoke the driving privilege  
6 of the arrested person, as provided in § 5-65-402. The suspension shall be as  
7 follows:

8 (1)(A) Suspension for one hundred eighty (180) days for the  
9 first offense of refusing to submit to a chemical test of blood, breath, or  
10 urine for the purpose of determining the alcohol or controlled substance  
11 contents of the person's blood or breath. However, if the court orders  
12 issuance of an ignition interlock restricted license under § 5-65-118, the  
13 interlock restricted license shall be available immediately. The restricted  
14 driving permit provision of § 5-65-120 does not apply to this suspension.

15 (B) The office, in addition to any other penalties, shall  
16 deny to that person the issuance of an operator's license until that person  
17 has been issued an ignition interlock restricted license for a period of six  
18 (6) months;

19 (2) Suspension for two (2) years, during which no restricted  
20 permits may be issued, for a second offense of refusing to submit to a  
21 chemical test of blood, breath, or urine for the purposes of determining the  
22 alcohol or controlled substance contents of the person's blood or breath  
23 within five (5) years of the first offense;

24 (3) Revocation for three (3) years, during which no restricted  
25 permits may be issued, for the third offense of refusing to submit to a  
26 chemical test of blood, breath, or urine for the purpose of determining the  
27 alcohol or controlled substance contents of the person's blood within five  
28 (5) years of the first offense; and

29 (4) Lifetime revocation, during which no restricted permit may  
30 be issued, for the fourth or subsequent offense of refusing to submit to a  
31 chemical test of blood, breath, or urine for the purpose of determining the  
32 alcohol or controlled substance contents of the person's blood or breath  
33 within five (5) years of the first offense.

34 (c) For all arrests or offenses occurring before July 30, 1999, but  
35 which have not reached a final disposition as to judgment in court, the  
36 offenses shall be decided under the law in effect at the time the offense

1 occurred, and any defendant shall be subject to the penalty provisions in  
2 effect at that time and not under the provisions of this section.

3 (d) In order to determine the number of previous offenses to consider  
4 when suspending or revoking the arrested person's driving privileges, the  
5 Office of Driver Services shall consider as a previous offense:

6 (1) Any conviction for offenses of operating or being in actual  
7 physical control of a motor vehicle while intoxicated or in violation of § 5-  
8 65-103 or refusing to submit to a chemical test which occurred prior to July  
9 1, 1996; and

10 (2) Any suspension or revocation of driving privileges for  
11 arrests for a violation of § 5-65-103 or violation of § 5-65-205(a) occurring  
12 on or after July 1, 1996, where the person was subsequently convicted of the  
13 criminal charges.

14 (e)(1) If the person is a resident without a license or permit to  
15 operate a motor vehicle in this state, the Office of Driver Services shall,  
16 in addition to any other penalties provided for in this section, deny to that  
17 person the issuance of a license or permit for a period of six (6) months for  
18 a first offense.

19 (2) For a second or subsequent offense by a resident without a  
20 license or permit to operate a motor vehicle, the Office of Driver Services  
21 shall, in addition to any other penalties provided for in this section, deny  
22 to that person the issuance of a license or permit for a period of one (1)  
23 year.

24  
25 SECTION 9. Arkansas Code § 5-65-208, regarding collisions and the  
26 testing required following collisions, is amended to add an additional  
27 subsection to read as follows:

28 (d)(1) If a person who is participating in a transdermal alcohol  
29 monitoring program is found to have unlawfully driven and was involved in an  
30 accident that results in the loss of human life or serious personal injury,  
31 then the transdermal alcohol monitoring device shall be sent to the law  
32 enforcement agency that is investigating the accident.

33 (2) The transdermal alcohol monitoring program shall fully  
34 comply with the law enforcement agency that is investigating the accident.

35 (3) If necessary to preserve evidence or to protect the chain of  
36 custody, the transdermal alcohol monitoring device and the reported output of

1 the transdermal alcohol monitoring device shall become the property of the  
2 law enforcement agency.

3  
4 SECTION 10. Arkansas Code § 5-65-402(a)(8)(C), regarding the surrender  
5 of a driver's license or permit to the arresting officer, is amended to read  
6 as follows:

7 (C) If the revocation, suspension, disqualification, or  
8 denial is based upon a chemical test result indicating that the person was  
9 intoxicated or impaired and a sworn report from a law enforcement officer,  
10 the scope of the hearing shall also cover the issues as to whether:

11 (i) The person was advised that his privilege to  
12 drive would be revoked, disqualified, suspended, or denied if the test result  
13 reflected an alcohol concentration equal to or in excess of the amount by  
14 weight of blood provided by law or the presence of other intoxicating  
15 substances;

16 (ii) The breath, blood, ~~or~~ urine specimen, or other  
17 bodily substance was obtained from the person within the established and  
18 certified criteria of the Department of Health;

19 (iii) The testing procedures used were in accordance  
20 with existing rules; and

21 (iv) The test result in fact reflects an alcohol  
22 concentration, presence of other intoxicating substances, or a combination  
23 thereof.

24  
25 SECTION 11. Arkansas Code § 5-65-402(c)(4)(B), regarding the surrender  
26 of a driver's license or permit to the arresting officer, is amended to read  
27 as follows:

28 (B) If the results of a chemical test of blood, breath, ~~or~~  
29 urine, or other bodily substances are used as evidence in the suspension,  
30 revocation, or disqualification of the person's privilege to drive, then the  
31 provisions of § 5-65-206 shall apply in the circuit court proceeding.